Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.

(2)

No. 90-376

In the Supreme Court of the United States

OCTOBER TERM, 1990

RICKY WAYNE GORDON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether, in the circumstances of this case, a law enforcement officer's reliance on a search warrant that erroneously stated the address of the place to be searched was objectively reasonable within the meaning of *United States* v. *Leon*, 468 U.S. 897 (1984).

TABLE OF CONTENTS

	Page
Opinion below	1
Jurisdiction	1
Statement	1
Argument	5
Conclusion	11

TABLE OF AUTHORITIES

Cases:

Andresen v. *Maryland*, 427 U.S. 463 (1976)	6
Brinegar v. *United States*, 338 U.S. 160 (1949)	8
Hill v. *California*, 401 U.S. 797 (1971)	8
Illinois v. *Rodriguez*, 110 S. Ct. 2793 (1990)	8
Maryland v. *Garrison*, 480 U.S. 79 (1987)	6, 7, 8
Massachusetts v. *Sheppard*, 468 U.S. 981 (1984)	8
State v. *Parmar*, 231 Neb. 687, 437 N.W.2d 503 1989)	9, 10
Steele v. *United States*, 267 U.S. 498 (1925)	6, 7
United States v. *Burke*, 784 F.2d 1090 (11th Cir.), cert. denied, 476 U.S. 1174 (1986)	7, 8
United States v. *Campanile*, 516 F.2d 288 (2d Cir. 1975)	9
United States v. *Clement*, 747 F.2d 460 (8th Cir. 1984)	9
United States v. *Gahagan*, 865 F.2d 1490 (6th Cir.), cert. denied, 109 S. Ct. 3242 (1989)	6, 7, 8, 9
United States v. *Hove*, 848 F.2d 137 (9th Cir. 1988)	9
United States v. *Leon*, 468 U.S. 897 (1984)	4, 5, 8, 9
United States v. *Owens*, 843 F.2d 462 (4th Cir. 1988)	8
United States v. *Ridinger*, 805 F.2d 818 (8th Cir. 1986)	6
United States v. *Turner*, 770 F.2d 1508 (9th Cir. 1985), cert. denied, 475 U.S. 1026 (1986)	8
United States v. *Weinstein*, 762 F.2d 1522 (11th Cir. 1985), cert. denied, 475 U.S. 1110 (1986)	8-9

Statutes: Page

U.S. Const. Amend. IV 4, 5, 6, 7, 8, 10
18 U.S.C. 924(c)(1) 2
21 U.S.C. 841(a)(1) 2

Miscellaneous:

2 W. LaFave, *Search and Seizure* (2d ed. 1987) 7, 9, 11

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A13) is reported at 901 F.2d 48. The order of the district court (Pet. App. C1-C10) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on April 26, 1990, and a petition for rehearing was denied on June 4, 1990. Pet. App. B1. The petition for a writ of certiorari was filed on August 31, 1990. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a plea of guilty in the United States District Court for the Southern District of Texas, peti-

tioner was convicted of possessing methamphetamine with intent to distribute it, in violation of 21 U.S.C. 841(a)(1) (Count 3), and of using a firearm in relation to a drug trafficking offense, in violation of 18 U.S.C. 924(c)(1) (Count 4). He was sentenced to a term of 121 months' imprisonment on Count 3 and to a consecutive term of 60 months' imprisonment on Count 4, to be followed by a three-year term of special parole. The district court also imposed special assessments of $100. R.E. 9.[1] The court of appeals affirmed. Pet. App. A1-A13.

1. On September 16, 1988, Drug Enforcement Administration Special Agent Wayne A. Hoffman was shown a residence in Harris County, Texas, that a police undercover officer had identified as a location where petitioner was believed to be manufacturing methamphetamine. Agent Hoffman believed the address of the residence was 18003 10th Street in the Magnolia Gardens subdivision. Accordingly, when he sought a search warrant from a federal magistrate to search the residence, he identified the premises by that address. Agent Hoffman's supporting affidavit stated that the undercover police officer had informed him: (1) that petitioner previously had taken the undercover officer to the residence and told the officer that it was the location of one of his clandestine amphetamine laboratories; (2) that the undercover officer observed glassware and chemicals used for the manufacture of amphetamine at the residence; (3)

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[1] "R.E." refers to the Appellant's Record Excerpts filed by petitioner in the court of appeals. Petitioner's guilty plea reserved his right to seek appellate review of the district court's denial of his suppression motion. Pet. App. A6. Following his guilty plea, the remaining two counts in the indictment were dismissed.

that petitioner gave the officer a sample of the manufactured drug; and (4) that petitioner expressed his intention to manufacture additional amounts of amphetamines. Pet. App. A2-A3; R.E. 18.

Agent Hoffman and other law enforcement officers then executed the warrant at the residence Hoffman had been shown by the undercover officer. During the search, the officers discovered a methamphetamine laboratory. Shortly thereafter, while reviewing relevant tax records to identify the owner of the premises, Agent Hoffman learned for the first time that the address on the search warrant, 18003 10th Street, did not exist and was not the correct address of petitioner's residence. Pet. App. A2-A3; R.E. 30-32.

2. Petitioner moved to suppress the evidence seized during the search. He argued that because of the mistaken recitation of the address of his residence, the warrant did not comply with the Fourth Amendment's requirement that a warrant shall "particularly describ[e] the place to be searched." At the suppression hearing, petitioner testified that the correct address of the residence was 18003 Riverside Drive in the Riverglen subdivision, and that the house was located three blocks from an intersection at which 10th Street reached a dead end at Riverside Drive. Agent Hoffman explained at the hearing why he believed that the residence he searched pursuant to the warrant was 18003 10th Street in Magnolia Gardens. Specifically, he testified that: (1) when he entered the vicinity on Garrett Street, which eventually became 10th Street, a sign said "Magnolia Gardens"; (2) the only street sign at the point where 10th Street intersected with Riverside Drive read "10th Street"; (3) at that intersection, the main road appeared to curve to the right at an angle of almost 90

degrees, while the road to the left appeared to be a small driveway; (4) a sign in front of the residence said "18003"; and (5) he thought he was still on 10th Street because of the "10th Street" sign and the absence of any other sign indicating that what turned out to be Riverside Drive was not a continuation of 10th Street. Agent Hoffman also said that he relied on the warrant to search 18003 Riverside Drive and that he would not have conducted the search if the magistrate had not approved the warrant. Pet. App. A3-A4; R.E. 30-34; Gov't C.A. Br. 5-6.

The district court denied petitioner's motion to suppress. Pet. App. C1-C10. It found that in light of the circumstances described by Agent Hoffman and the layout of the neighborhood, it was reasonable for Agent Hoffman to infer that the street on which the residence was located was 10th Street. *Id.* at C6. Because "the executing officer personally knew the location of the residence to be searched and, in fact, the intended place was indeed searched," the court concluded that "the technical error in the description of the place to be searched did not render the search warrant invalid." *Id.* at C4.

3. The court of appeals affirmed the denial of the suppression motion. Pet. App. A1-A13. The court found it unnecessary to reach the question whether the incorrect address actually rendered the search warrant invalid under the Fourth Amendment, because it concluded that the evidence seized during the search was in any event admissible under the good faith exception to the exclusionary rule, articulated by this Court in *United States* v. *Leon*, 468 U.S. 897 (1984). Pet. App. A7. The court observed that despite the erroneous address, the warrant was not "facially deficient" in the sense that would render the officers' reliance on it unreasonable. To find the

warrant facially deficient, the court held, "would egregiously elevate form over substance," because Agent Hoffman had probable cause to search petitioner's residence and intended to and did search only the residence he previously had seen with the undercover police officer. *Id.* at A8-A9. Finding that Agent Hoffman's belief in the validity of the warrant was therefore objectively reasonable, that nothing in the record suggested bad faith on his part, that in the circumstances any Fourth Amendment violation was "purely technical," and that "any marginal increase in deterrence that application of the [exclusionary] rule would achieve is outweighed by the societal costs of suppression," the court sustained the district court's denial of the suppression motion. *Id.* at A11-A12.

ARGUMENT

1. Petitioner first contends (Pet. 8-12) that the search warrant in the present case was "facially deficient" and that it therefore was not objectively reasonable, under *Leon*, for Agent Hoffman and those accompanying him to rely on the warrant as authorization for the search. This contention is without merit.

The Court held in *United States* v. *Leon*, 468 U.S. 897, 918 (1984), that "suppression of evidence obtained pursuant to a warrant should be ordered only on a case-by-case basis and only in those unusual cases in which exclusion will further the purposes of the exclusionary rule." Among several examples of such "unusual cases," the Court described the following situation (*id.* at 923):

> Finally, depending on the circumstances of the particular case, a warrant may be so facially deficient—*i.e.*, in failing to particularize the place

> to be searched or the things to be seized—that the executing officers cannot reasonably presume it to be valid.

The search warrant in this case was not "facially deficient" in particularizing the place to be searched, so as to take this case outside the good-faith exception to the exclusionary rule.

The purpose of the Fourth Amendment's particularity requirement is to prevent general searches. *Maryland* v. *Garrison*, 480 U.S. 79, 84 (1987). "By limiting the authorization to search to the specific areas and things for which there is probable cause to search, the requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit." *Ibid.*; see also *Andresen* v. *Maryland*, 427 U.S. 463, 480 (1976). It also serves to exclude other locations as the possible subjects of the search. See *United States* v. *Gahagan*, 865 F.2d 1490, 1496 (6th Cir.), cert. denied, 109 S. Ct. 3242 (1989); *United States* v. *Ridinger*, 805 F.2d 818, 819 (8th Cir. 1986). The particularity requirement is applied in a common-sense manner. "It is enough if the description is such that the officer with a search warrant can, with reasonable effort, ascertain and identify the place intended." *Steele* v. *United States*, 267 U.S. 498, 503 (1925).

The warrant in this case clearly satisfied the foregoing principles. It authorized the search of "the premises known as * * * 18003 10th Street, Magnolia Gardens, Harris County, Texas." R.E. 14.[2]

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[2] The warrant also specified with particularity the contraband and other evidence and fruits of petitioner's drug-manufacturing enterprise to be seized. R.E. 14.

There is no reason to believe that this description was inherently inadequate to identify the premises to be searched.[3] It is common practice for a warrant to use a street address for this purpose. See, *e.g.*, *Steele* v. *United States*, 267 U.S. at 503; 2 W. LaFave, *Search and Seizure* § 4.5(a), at 208 (2d ed. 1987). In this case, even though the address was not technically correct, it identified the residence with sufficient particularity to enable an officer to "ascertain and identify the place intended" to be searched. See *United States* v. *Gahagan*, 865 F.2d at 1496-1499; *United States* v. *Burke*, 784 F.2d 1090, 1092-1093 (11th Cir.), cert. denied, 476 U.S. 1174 (1986); cf. *Steele* v. *United States*, 267 U.S. at 503.

Moreover, as the district court held, Pet. App. C6, Agent Hoffman's failure to appreciate his mistake about the address of the residence at the time he applied for and executed the warrant was reasonable under the circumstances, in light of the configuration of the streets and the absence of signs that would have alerted Agent Hoffman to the correct address. Accordingly, when the situation is judged, as it must be, on the basis of the information known to Agent Hoffman and the other officers, see *Maryland* v. *Garrison*, 480 U.S. at 84-85, it is clear that their conduct was reasonable. Thus, contrary to petitioner's contention (Pet. 8-12), the decision below neither misapplies *Leon* nor undermines the particularity requirement of the Fourth Amendment. Quite apart

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[3] Moreover, the supporting affidavit stated that the affiant, Agent Hoffman, had been shown the premises by the undercover police officer, thereby demonstrating that he personally knew which residence was to be searched.

from the good-faith exception to the exclusionary rule articulated in *Leon*, the Court has consistently refused to suppress evidence when officers conducting a search act on the basis of a reasonable, but erroneous, belief as to the facts. See *Illinois* v. *Rodriguez*, 110 S. Ct. 2793, 2799-2801 (1990); *Maryland* v. *Garrison*, 480 U.S. at 85, 87-88; *Hill* v. *California*, 401 U.S. 797, 803-804 (1971); *Brinegar* v. *United States*, 338 U.S. 160, 176 (1949).

2. Petitioner contends (Pet. 12-17) that because the court of appeals' finding that Agent Hoffman's reliance on the search warrant was objectively reasonable was based in part on information known to Agent Hoffman but not to the magistrate who issued the warrant, that finding is in conflict with decisions of the Ninth Circuit and of the Supreme Court of Nebraska.

Leon specifically contemplates that courts will consider "all of the circumstances" in determining whether a police officer's reliance on a search warrant is objectively reasonable. 468 U.S. at 922 n.23; see also *Massachusetts* v. *Sheppard*, 468 U.S. 981, 989-990 & n.6 (1984). The court of appeals therefore properly took Agent Hoffman's personal knowledge of the place to be searched into account when it ruled that his reliance on the search warrant was reasonable even though, unbeknownst to him, the warrant contained an erroneous address for the place to be searched. Other courts have reached similar conclusions in analogous Fourth Amendment contexts. See *United States* v. *Gahagan*, 865 F.2d at 1497-1498; *United States* v. *Owens*, 848 F.2d 462, 465-466 (4th Cir. 1988); *United States* v. *Burke*, 784 F.2d at 1092-1093; *United States* v. *Turner*, 770 F.2d 1508, 1511 (9th Cir. 1985), cert. denied, 475 U.S. 1026 (1986); *United States* v. *Weinstein*, 762 F.2d 1522,

1532-1533 (11th Cir. 1985), cert. denied, 475 U.S. 1110 (1986); *United States* v. *Clement*, 747 F.2d 460, 461 (8th Cir. 1984); *United States* v. *Campanile*, 516 F.2d 288, 291 (2d Cir. 1975); see also 2 W. LaFave, *supra*, § 4.5(a), at 214-215 (approving consideration of facts known to affiant where there is reason to believe that erroneous statement in description of premises was made in good faith effort to provide complete description).[4]

Despite petitioner's assertions, neither *United States* v. *Hove*, 848 F.2d 137 (9th Cir. 1988), nor *State* v. *Parmar*, 231 Neb. 687, 437 N.W.2d 503 (1989), holds to the contrary. Both cases involved the quite different situation of the complete failure of the affidavit supporting the search warrant to state probable cause. In each case the court held that the search warrant and supporting affidavit, on their face, precluded reasonable reliance. And in each case the court relied not on the discussion in *Leon* of a warrant that was facially deficient in particularizing the place to be searched, but rather on the discussion of a warrant based on an affidavit that, on its face, was "so lacking in indicia of probable cause to render official belief in its existenec entirely unreasonable." 468 U.S. at 923. See *Hove*, 848 F.2d at 140; *Parmar*, 231 Neb. at 698, 437 N.W.2d at 510 (quoting *Hove*). In the present case, by contrast, petitioner does not dispute the existence of probable cause (much less argue that the supporting affidavit was so lacking in indicia of probable cause as to preclude reasonable

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[4] Because Agent Hoffman personally knew which premises were to be searched and because the erroneous address in the warrant did not actually exist, there was no possibility that another residence could have been searched in reliance on the warrant. Pet. App. A10 n.3; see *United States* v. *Gahagan*, 865 F.2d at 1498.

reliance), and the court of appeals specifically found that the warrant and supporting affidavit were not "facially deficient" and that Agent Hoffman's reliance on them was objectively reasonable. Pet. App. A9, A11.

In *Hove*, because of a stenographer's error, the affidavit supporting the search warrant did not link either the suspect or any criminal activity with the place to be searched. 848 F.2d at 139-140. In the court's view, the resulting absence of "any indicia of probable cause" rendered the officer's belief in the existence of probable cause objectively unreasonable, a deficiency that could not be cured by the subsequent testimony of a police officer about facts that might have established probable cause if they had appeared in the supporting affidavit. *Id.* at 140. In *Parmar*, although the supporting affidavit identified a BB gun as an item to be seized pursuant to the warrant, it failed to explain the gun's relevance to the investigation or the factual basis for its seizure. On these facts, the court reached a conclusion similar to that of the Ninth Circuit in *Hove*. 231 Neb. at 692, 695, 437 N.W.2d at 507, 509.[5] There is a clear difference between the complete failure of affidavits to state the core Fourth Amendment element of probable cause and the "purely technical" Fourth Amendment violation that might have occurred here, despite the facial validity of the warrant.[6] Accordingly, both *Hove* and *Parmar* are readily distinguishable.

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[5] The court nevertheless affirmed the defendant's conviction, holding that admission of the BB gun into evidence was harmless beyond a reasonable doubt. 231 Neb. at 701, 437 N.W.2d at 512.

[6] As noted above (see page 4, *supra*), because the court of appeals concluded that the evidence seized was admissible

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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NOVEMBER 1990

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under *Leon*, it did not reach the question whether the search violated the Fourth Amendment. See 2 W. LaFave, *supra*, § 4.5(a), at 212-215 & n.33 (discussing cases, including *Burke*, *Turner* and *Clement*, that found no Fourth Amendment violation where there was an error in the description of the premises to be searched); see also Pet. App. A10-A11 (same).

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